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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 7,123,728 :
Issued: October 17, 2006 :
Application No. 09/929,935 :
Filed: August 15, 2001 :
Attorney Docket No. APL1P214-P2664 :

This is a decision on the petition under 37 CFR 1.182, filed December 20, 2006, requesting issuance of a duplicate Letters Patent for the above-identified application.

The petition is **DISMISSED**.

The file record discloses that the instant application matured into U.S. Patent No. 7,123,728 on October 17, 2006. However, petitioner contends that the patent was never received and it is presumed lost in the mail.

The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

In the absence of any irregularity there is a strong presumption that the communications was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communications was not in fact received.

The showing in the instant petition is not sufficient to waive the petition fee because practitioner did not include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

The \$400.00 petition fee will not be refunded at this time. If petitioner submits the necessary documents, the fee will then be refunded. Should petitioner choose not to submit the appropriate documents, a renewed petition should still be submitted with instructions to process the petition as normal and a duplicate Letters Patent will be issued.

¹ See MPEP 711.03(c) and notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioner also submitted a \$130.00 petition fee. However, only the \$400.00 fee is necessary. Accordingly, the \$130.00 fee will be credited to petitioner's deposit account.

Further correspondence with respect to this matter should be addressed as follows:

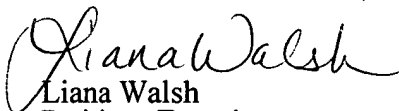
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 ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.


Liana Walsh
Petitions Examiner
Office of Petitions